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and VI Healthcare Finance, Inc.

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

In re:

SOUTHERN INYO HEALTHCARE  
DISTRICT,

Chapter 9 Debtor.

Case No.: 16-10015-A-9

Chapter 9

Doc. No.

Date: October 16, 2018

Time: 1:30 p.m.

Place: 5<sup>th</sup> Fl, Ct Rm.: 11, Dept. A,  
U.S. Bankruptcy Court  
2500 Tulare St.  
Fresno, CA 93721

Judge: HON. FREDRICK E. CLEMENT

**CHAPTER 9 STATUS CONFERENCE REPORT OF HEALTHCARE  
CONGLOMERATE ASSOCIATES, LLC, AND VI HEALTHCARE FINANCE, INC.**

HEALTHCARE CONGLOMERATE ASSOCIATES, LLC, AND VI HEALTHCARE  
FINANCE, INC. ("HCCA" AND "VI"), creditors in the above-captioned bankruptcy case (the  
"Case"), respectfully submit their *Chapter 9 Status Conference Report*.

1. On December 2, 2017, the Court made its *Order Approving Stipulation Re  
Rejection of HCCA Management Agreement* [Dkt. No. 382] (the "Rejection Order"). The  
Rejection Order approved that certain *Stipulation Re Rejection of HCCA Management Agreement*  
[Dkt. No. 377], which specifically preserved HCCA's right to contest allegations made in the

1 *Debtor's Emergency Motion (1) for Authority to Immediately Terminate HCCA Management*  
2 *Agreement* [Dkt. No. 325], including the Debtor's allegations that the MSA is a prepetition  
3 contract.

4 2. On January 30, 2018, HCCA filed its *Request for Payment of Administrative*  
5 *Expense Claim of Healthcare Conglomerate Associates, LLC Arising Out of Rejection of*  
6 *Executory Contract (11 U.S.C. §§ 503(b) and 507(a)(2))* (the "HCCA Claim") in the total amount  
7 of \$2,524,054.00 [Dkt. No. 406]. This claim arises out of the rejection of that certain  
8 Management Services Agreement ("MSA") dated sometime in January of 2016, between HCCA  
9 and Southern Inyo Healthcare District (the "Debtor"). HCCA did not set a hearing on the HCCA  
10 Claim.

11 3. On February 23, 2018, the Debtor filed the *Debtor's Opposition to Request for*  
12 *Payment of Administrative Expense Claim of Healthcare Conglomerate Associates, LLC Arising*  
13 *Out of Rejection of Executory Contract (11 U.S.C. §§ 503(b) and 507(a)(2))* [Dkt. No. 413]. The  
14 Debtor did not set a hearing on its opposition to the HCCA Claim.<sup>1</sup>

15 4. On June 8, 2018, Vi filed its *Request for Payment of Administrative Expense*  
16 *Claim of Vi Healthcare Finance, Inc. (11 U.S.C. §§ 503(b) and 507(a)(2))* (the "VI Claim") in the  
17 total amount of \$1,423,418.72 [Dkt. No. 447]. Vi did not set a hearing on the Vi Claim.

18 5. On May 30, 2018, the Debtor commenced an adversary proceeding against HCCA  
19 and Vi entitled, Complaint for: (1) Avoidance of Unauthorized Post-Petition Transfers; (2)  
20 Breach of Contract; (3) Accounting; (4) Negligence; (5) Concealment; (6) Breach of Fiduciary  
21 Duty; (97) Declaratory Relief; (8) Equitable Subordination; (9) Violation of Government Code §  
22 8314. Adv. Pro. No. 18-01031 (the "Complaint") [Dkt. No. 1].<sup>2</sup> HCCA and Vi have responded to  
23 the Complaint and the status conference has been continued to October 16, 2018 at 1:30 p.m. The  
24 parties to the Complaint are discussing mediation options for the early part of 2019, but any  
25 decision on mediation dates and a choice of mediator have been delayed due to the Debtor's  
26

27 <sup>1</sup> Due to allegations of conflict of interest against Ms. McDow and her former law firm, Baker Hostetler, the  
Debtor was forced to retain special counsel, Sam Maizel of Dentons US LLP, to file opposition to the HCCA Claim.

28 <sup>2</sup> Due to allegations of conflict of interest against Ms. McDow, Baker Hostetler and Foley & Lardner, the  
Debtor was forced again to retain yet another special counsel to prosecute the Complaint, Jeffrey Shinbrot.

1 former attorneys not having fully turned over their files to the malpractice attorneys retained by  
2 HCCA and Vi. Conversations are ongoing.

3       6. Further complicating efforts to mediate the disputes among the parties is the  
4 demand by HCCA and Vi that the current attorneys for the Debtor (Ashley Ms. McDow and  
5 Foley & Lardner) withdraw from representing the Debtor due to alleged conflicts of interest.  
6 HCCA and Vi believe that these conflicts of interest are particularly highlighted in the context of  
7 mediating claims against Debtor's counsel, as well as those asserted in the Complaint. On  
8 September 17, 2018, counsel for HCCA and Vi wrote to Ms. McDow and various partners in the  
9 Foley & Lardner firm demanding that both Ms. McDow and her firm withdraw from representing  
10 the Debtor (the "Demand Letter"). The Demand Letter requested a response no later than  
11 September 30, 2018. As of October 9, 2018, Defendants have not received any substantive  
12 response to the Demand Letter. Consequently, HCCA and Vi are preparing a motion to  
13 disqualify Ms. McDow and the Foley & Lardner firm and expect to have that motion on file  
14 before the October 16th status conference in the Case with a hearing scheduled for either  
15 November 14, 2018 or December 12, 2018 at 2:00 p.m.

16       7. The Debtor filed Chapter 9 almost three years ago, yet almost nothing has been  
17 accomplished to date. The Debtor has filed three separate plans of adjustment, but no plan  
18 confirmation hearing has ever occurred. In fact, the Debtor withdrew its Second Amended  
19 Disclosure Statement at the February 28, 2018 hearing on its approval [Dkt. No. 422]. At that  
20 same hearing, the Debtor was ordered by the court to "file redlined copies of any amended plan  
21 and disclosure statement filed." [Dkt. 425]. The Status Conference in this Case has been  
22 continued three more times since the February 28, 2018 Status Conference (May 30<sup>th</sup>, August 29<sup>th</sup>  
23 and October 16<sup>th</sup>), but still the Debtor has been unable to file another plan. HCCA has not  
24 managed the Debtor's hospital since the Fall of 2017. Each time the Debtor comes before the  
25 Court arguing it needs more time, an election must occur, circumstances have changed, etc.

26       8. A multi-party mediation is still being discussed by the Debtor, HCCA and Vi, but  
27 in any such mediation the alleged professional negligence of Ms. Dow and others will be front  
28 and center and Ms. McDow and her former partner at Baker Hostetler, Bruce Greene, will likely

1 be key witnesses for HCCA and Vi. Unless Ms. McDow resigns from the case or this Court has  
2 had the opportunity to rule on a disqualification motion to be filed in the next few days, mediation  
3 efforts will be stymied, and this Case will remain on “life support.”

4 9. HCCA and Vi request an order setting a “bar date” for the Debtor to file its Third  
5 Amended Plan and Third Amended Disclosure Statement. Alternatively, dismissal of the case on  
6 a *sua sponte* base seems warranted under the circumstances.

7  
8 Dated: October 9, 2018

KLEIN, DENATALE, GOLDER, COOPER, ROSENLIB  
& KIMBALL, LLP

9  
10 By: 

HAGOP T. BEDOYAN, Attorneys for  
Healthcare Conglomerate Associates, LLC  
and VI Healthcare Finance, Inc.